

Final Supplemental Environmental Assessment

Interim Flows Project - Water Year 2011



September 2010

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Attachments

- Attachment A-1** – Information and Attachments Submitted with the San Joaquin River Exchange Contractors Water Authority and the San Joaquin River Resource Management Coalition Comment Letter
- Attachment A-2** – Attachments Submitted with the San Luis & Delta-Mendota Water Authority and the State Water Contractors Comment Letter

Appendices

- Appendix A** – Draft Financial Assistance Agreement and Related Correspondence with the Lower San Joaquin Levee District
- Appendix B** – Draft 2010 Annual Technical Report

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1.0 Introduction

Pursuant to the National Environmental Policy Act, the Department of the Interior, Bureau of Reclamation (Reclamation) is preparing this Final Supplemental Environmental Assessment (EA) for the Water Year (WY) 2011 Interim Flows Project (Proposed Action or Project). This Final Supplemental EA is being prepared to extend the period of modified releases of water from Friant Dam for one additional year (WY 2011 or October 1, 2010 to September 30, 2011) in accordance with the flow schedule in Exhibit B of the Settlement in *NRDC et al. v. Rodgers et al.* (Settlement), and in a manner consistent with Federal, State and local laws, and any agreements with downstream agencies, entities, and landowners. This Final Supplemental EA supplements the Draft EA/Initial Study (IS) for the WY 2010 Interim Flows Project (herein referred to as the WY 2010 Final EA/IS), includes a review of the WY 2010 Final EA/IS, synthesizes discussions/results where conditions have changed, and evaluates potential impacts due to implementation of the Proposed Action in consideration of changed conditions or new data/information that have occurred since the approval of the WY 2010 Final EA/IS.

1.1 Overview of the Final Supplemental EA

The National Environmental Policy Act (NEPA) requires that an EA include the need for the proposed action, the proposed action and alternatives, the probable environmental impacts of the proposed action, and the agencies and persons consulted during the preparation of the EA. Reclamation policy states that the public draft EA and Finding of No Significant Impact (FONSI) is placed on the Reclamation NEPA database and a press release is sent to notify the public of the comment period for the document. The Final Supplemental EA includes all comments received on the Draft Supplemental EA and the responses to those comments. The Final Supplemental EA also includes clarifications based on comments received during the comment period in the form of errata. The Final Supplemental EA serves as the factual support document for the conclusions in the corresponding Finding of No Significant Impact (FONSI).

This Final Supplemental EA is composed of two documents, the Draft Supplemental EA and this Final Supplemental EA. The Draft Supplemental EA was available for public review on June 11, 2010 and distributed to potentially interested parties for a 30-day public review period, as well as being placed on the publicly-accessible Reclamation NEPA database. The public review period was extended two weeks and closed on July 23, 2010. This Final Supplemental EA contains a list of commentors on the Draft Supplemental EA and their comment letters in Chapter 2. The lead agencies response to the environmental considerations raised in the comment letters are provided in Chapter 3 and revisions to the Draft Supplemental EA are provided in Chapter 4. References are provided in Chapter 5. **Both volumes of the Final Supplemental EA must be read together. This Final Supplemental EA does not repeat the information in the Draft Supplemental EA.**

Section 1503.4, Response to Comments, of the Council on Environmental Quality's (CEQ) CEQ Regulations on Implementing NEPA, states that if changes in response to comments are minor and are confined to making factual corrections or an explanation of why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position, then the agencies may write them on errata sheets and attach them to the

statement instead of rewriting the draft statement. In such cases only the comments, the responses, and the changes and not the final statement need be circulated. As no substantive comments were received related to modification of alternatives, development and evaluation of alternatives not previously given serious consideration by the agency, or suggestions on improvements or modifications to existing analyses in the document (NEPA CEQ Regulation 1503(a)), the responses to comments are provided as errata and the Draft Supplemental EA is incorporated by reference into this Final Supplemental EA.

As this Final Supplemental EA is partially based on the analyses and conclusions in the WY 2010 Final EA/IS, the WY 2010 Final EA/IS is also incorporated by reference.

2.0 Comments

This section contains a copy of comment letters received from Federal agencies, State agencies, local agencies and organizations, and individuals. Table 2-1 indicates the commenting entity and abbreviation used to identify commentors. Individual comments within a comment letter are delineated by the abbreviation and sequential number (e.g., NMFS-1). Responses to comments are provided in Chapter 3, Responses to Comments, and are numbered corresponding to the numbers assigned in the letter. Modifications to the Draft Supplemental EA made in response to comments are included in Chapter 4 of this Final Supplemental EA (the Errata section of this document).

**Table 2-1.
Summary of Comment Letters Received and
Abbreviations used to Identify and Respond to Comments**

Abbreviation	Agency	Affiliation
NMFS	National Marine Fisheries Service	Federal Agency
CVFPB	Central Valley Flood Protection Board	State Agency
FWUA	Friant Water Users Authority	Local Agency
LSJLD	Lower San Joaquin Levee District	Local Agency
SJRECWA & RMC*	San Joaquin River Exchange Contractors Water Authority and San Joaquin River Resource Management Coalition	Local Agency & Organization
SLDMWA & SWC*	San Luis & Delta-Mendota Water Authority and State Water Contractors	Local Agency
SLDMWA & SJRECWA	San Luis & Delta-Mendota Water Authority and San Joaquin River Exchange Contractors Water Authority	Local Agency
PFC(A)	Paramount Farming Company	Individual
PFC(B)	Paramount Farming Company	Individual
* Information and attachments provided with these comment letters are included as Attachments A-1 and A-2, respectively to this document.		

One late comment letter was received on September 3, 2010 from the San Luis & Delta-Mendota Water Authority and the San Joaquin River Exchange Contractors Water Authority. Although this letter was late and a response is not required under NEPA, Reclamation has chosen to allow the inclusion of this comment into the record for the Final Supplemental EA.

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Comments from National Marine Fisheries Service

Gasdick, Alicia E

From: Rhonda Reed [Rhonda.Reed@noaa.gov]
Sent: Friday, July 23, 2010 4:44 PM
To: Banonis, Michelle
Cc: Gasdick, Alicia E; Leslie Mirise; Erin Strange
Subject: Comments on Public Draft of WY 2011 Interim Flows Supplemental EA

e-Memo

To: Michelle Banonis, Bureau of Reclamation, San Joaquin River Restoration Program Office
From: Rhonda Reed, National Marine Fisheries service, San Joaquin River Basin Acting Branch
Chief Leslie Mirise, National Marine Fisheries service, Fishery Biologist

Included in this email are National Marine Fisheries Service's (NMFS) comments on the SJRRP Water Year (WY) 2011 Interim Flows Public Draft Environmental Assessment (EA). Some of the environmental consequences described in the EA are addressed by referencing analyses performed within the project Biological Assessment (BA); therefore, portions of these comments may apply more specifically to those analyses. NMFS' comments are as follows:

NMFS-1

1) ****Recirculation and Recapture** - There must be a more specific discussion regarding recirculation and recapture including recapture rates and timing, and which facilities will be utilized. Estimated ranges at each facility are acceptable. This information must be in greater detail than what is currently in the EA and BA, and must be consistent with Reclamation's Petitions to the State Water Resources Control Board for WY 2011 Temporary Transfer Permitted Applications 234, 1465, and 5638, if this EA is intended to cover those petitions related to this project.

If screened facilities will be utilized for recapture, the following details for each specific screened diversion must be presented in the analysis: whether or not the screens meet NMFS criteria, the current pumping capacity and current use, how proposed recapture would change current operations, if the proposed recapture falls within their project and take limits, if there are existing biological opinion(s) for the facilities, and if any additional take is expected. Describe if the two proposed unscreened diversions are covered under any existing biological opinion(s). If so, describe how or if the proposed recapture falls within their project and take limits. In addition, justification must be provided within the environmental consequences analysis why there will be no take of steelhead as section 2.2.2 of the EA states, "Recapturing water downstream of the Restoration Area could increase fish entrainment risks." The species account in the BA states that steelhead are present within the system at all times of the year, and yet, an assumption is made that no take would occur at the unscreened diversions. The information provided does not support this assumption.

If the Proposed Action will recapture water from upstream locations within the Restoration Area (/i.e./, Mendota Pool), how will needed monitoring occur in the lower reaches (3, 4 and 5). How will this purpose of the Project be fulfilled?

If, as stated in the project description, there is no Vernalis Adaptive Management Program (VAMP) flow contribution from the tributaries, contributions from the Project could allow less water to be released from New Melones Reservoir to meet Delta water quality objectives, set forth by the State Water Resources Control Board Decision-1641 and the 1995 Bay-Delta Water Quality Control Plan. Would this water be considered part of the recaptured flows? The present analysis does not consider this potential effect or how such conditions would interface with the New Melones Dam operations covered by the NMFS Biological

NMFS-1 [pinion for the Long-term Operations Criteria and Plan (Operations B0) for the Central Valley Project (CVP) and State Water Project (SWP)..

NMFS-2 2) ****Hills Ferry Barrier (HFB) Operation and Effects on Steelhead** - The EA describes that the "Interim Flows will likely provide conditions that could allow emigrating juvenile salmon and steelhead to stray upstream of the [confluence of the] Merced River." Effects of this are not mentioned specifically in the Environmental Consequences Analysis. In the BA, effects to adult steelhead from the Project are discounted due to the operation of the HFB. The analysis must be expanded beyond the time the HFB is in operation to include:

(1) impacts due to delayed spawning in the Merced River or other tributaries as a result of straying into the lower Restoration Area; and (2) impacts to steelhead in the spring when the barrier is not in operation. There must be clarification in the effects analysis (page 6-4 of the BA), where the argument states that the HFB is not operated in the spring time due to few juvenile steelhead being present upstream of the Merced River confluence, when in fact, the HFB is not operated due to high spring flows that exceed the barrier's capacity.

The area analyzed within the BA's effects analysis for steelhead is not consistent with the action area. The analysis must include effects of the Project on the action area, including the San Joaquin River tributaries and the Delta.

3) ****Delta Operations and VAMP** - Please clarify the last paragraph on page 6-30 through the second paragraph on page 6-31 of the BA, and similar language that may appear in the EA. As it is written, it is stated that emigrating steelhead are at risk at upstream sections of the Old and Middle rivers. Provide justification for the may affect, not likely to adversely affect determination if the fish are "at risk" of entrainment. Also, it is stated numerous times throughout the document that the U.S. Fish and Wildlife Service (USFWS) and NMFS Operations B0s and reasonable and prudent alternative (RPA) will be implemented. How then can there be an increase in pumping at the CVP/SWP Jones and Banks pumping facilities? This needs to be re-stated that recapture of interim flows at these pumps, lies within the levels specified by the Operations B0s.

This BA and determination relies heavily on Delta operations according to the Operations B0s and implementing the RPA (reference sections 3.9.3 and 3.9.4). Consequently, should the Federal Court vacate or modify the Operations B0s/RPA such an action may trigger the need for reinitiation of consultation for the Project.

NMFS-3 The environmental baseline in the Operations B0 consultations, as well as the WY 2010 Interim Flows project, assumes that the VAMP, or VAMP-like, flows will be implemented. The baseline in this EA includes language that the VAMP agreement has expired. While this is true, on pages 642-643 of the NMFS Operations B0, NMFS expects tributary contributions from the Merced and Tuolumne rivers to continue through 2011, and that Reclamation shall seek supplemental agreement with the San Joaquin River Group Authority for tributary contributions so as to not rely on New Melones Reservoir to meet required flows at Vernalis, California. The EA does not identify the effect the Project might have in this range of potential scenarios. Therefore, there must be further analysis on the effects to the tributary flows and corresponding listed species and critical habitat as a result of the Project in the context of the analysis done for the WY 2010 Interim Flows project consultation.

Because the agreement for 2011 tributary contributions does not yet exist and because time is of the essence with respect to implementing the Project as identified in the Settlement, NMFS recommends that Reclamation's analysis should evaluate the effects of a range of possible flow conditions from the tributaries that could be affected by the Project in WY2011. The analysis must include a discussion of how the Project could change the amount of flow required from the Stanislaus River to meet Vernalis water quality objectives and provide potential beneficial/negative effects. For example, how will the Project modify water quality releases and related storage in New Melones Reservoir and the effects on steelhead in the Stanislaus River?

NMFS-4

4) *Relationship To Other Programs* – In Section 2.2.4 of the EA, page 2-35 it would add clarity for the reader to add the species affected by the RPA at the end of the sentence “NMFS developed an RPA in accordance with ESA requirements”. Section 4.4.4 of the BA blends the Delta Stewardship Council and the CALFED Bay-Delta Program, which is not strictly correct. The Delta Stewardship Council will take over the governance role and some implementation roles for CALFED; but the CALFED Bay-Delta Program is essentially a 25-year program, defined by a Record of Decision (ROD) signed by the consortium of agencies referenced, including all the SJRRP settling parties. The ROD has not been vacated, nor necessarily modified as yet. Reclamation has specific Congressional authorities to implement CALFED, but no specific authorities at this time to implement directives of the Delta Stewardship Council, which is authorized by state legislation. This section needs clarification to explain the program accurately in light of Reclamation’s authorities to implement in relation to the Project.

Thank you for the opportunity to comment on this document. Please feel free to contact Leslie Mirise of my staff, or me, if you have any questions regarding these comments.

--

Rhonda Reed

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Happiness is an inside job... Chocolate helps.

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Comments from Central Valley Flood Protection Board

STATE OF CALIFORNIA – CALIFORNIA NATURAL RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, GOVERNOR

CENTRAL VALLEY FLOOD PROTECTION BOARD

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MDL		



July 21, 2010

Michelle Banonis
U.S. Bureau of Reclamation
San Joaquin River Restoration Program Office, MP-170
2800 Cottage Way, Room W-1727
Sacramento, California 95825-1898

Dear Ms. Banonis:

Draft Supplemental Environmental Assessment
Draft Finding of No New Significant Impact
Interim Flows Project – Water Year 2011 San Joaquin River Restoration Program

The Central Valley Flood Protection Board (Board) is responsible for flood safety within California and maintains the integrity of the existing flood control system and designated floodways through the Board's regulatory authority by issuing permits for encroachments. Development projects within the jurisdiction of the Board are required to meet standards for the construction, maintenance, and protection of adopted plans of flood control that will protect public lands from floods. The jurisdiction of the Board includes the Central Valley, including all tributaries and distributaries of the Sacramento River and the San Joaquin River, and designated floodways (Title 23 California Code of Regulations (CCR), Section 2). Working with the Board's staff early in the project planning will help Board staff and other interested parties to identify potential project impacts, appropriate mitigation measures, and thereby improve the safety of floodways.

Board staff has reviewed the Supplemental Environmental Assessment for the project and provides the following comments:

Significant Impacts

The draft document concludes that the proposed project would not result in any significant impacts to flood management and would have less than significant impacts in flood management operations of the affected flood control project. The draft document based these conclusions on the fact that the proposed interim flows are below the design flow capacities of the river channel and bypasses. Even though these flows are below the design flow capacities, interim flows are in addition to what normally would be present without this project. The draft document should provide additional analysis and evaluation of the potential impacts and mitigation measures of these additional flows to the operations and maintenance of the flood control system and to the system's functioning. For example, the draft document should include engineering solutions for seepage problems in the levees of the flood control facilities and mitigation measures that provide compensation for easements, increased operations, and maintenance costs associated with the additional flows in the flood control channels and bypasses.

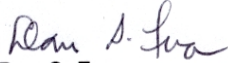
CVFPB-1

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Project	214
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Date Input & Initials	7/22/2010 JS#

Michelle Banonis
July 21, 2010
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Thank you for your consideration of these comments. If you have any questions in this matter, please contact James Herota, Staff Environmental Scientist, at (916) 574-0651, or by e-mail at jherota@water.ca.gov.

Sincerely,



Dan S. Fua
Supervising Engineer
Flood Projects Improvements Branch
(916) 574-0698

cc: Mr. Reggie Hill, Secretary and Manager
Lower San Joaquin Levee District
11704 West Henry Miller Avenue
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Comments from The Lower San Joaquin Levee District

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Re: The Lower San Joaquin Levee District's comments on the "Supplemental
Environmental Assessment – Interim Flows Project – Water Year 2011"

Dear Mr. Banonis:

Please accept this letter as the Lower San Joaquin Levee District's comments in its review of the above-referenced document. The District commented by letter dated July 8, 2009, on the "Water Year 2010 Interim Flows Project – Draft Environmental Assessment and Finding of No Significant Impact / Initial Study and Mitigated Negative Declaration", (see the final WY 2010 environmental document, Appendix I, pages 3-27 to 3-40). The "Final Environmental Assessment / Initial Study – Water Year 2010 Interim Flows Project" (the "final WY 2010 environmental document") contained responses to the District's comments and those comments resulted in some editing of the draft. The Levee District has chosen to go back to the numbers assigned by the responses to the District's comments in order to bring forward those same concerns. Since the "Supplemental Environmental Assessment for Water Year 2011," supplements the final version of the 2010 document, the District hereby incorporates by reference its comments contained in the letter of July 8, 2009.

LSJLD-1

1. Both financial and operational agreements with the Levee District are still needed for the District to operate, inspect and maintain the flood control facilities. These activities include maintaining levees, channels, flap gates and bifurcation structures, and patrolling levees to assess conditions, maintain channels, assess vegetation encroachment, sediment deposits and debris accumulation that affects design capacity and checking flap gates before and after the release of WY 2011 Interim Flows. These agreements need to reimburse the District for all of the costs that it has already incurred, (including the costs incurred before the beginning of WY 2010 in conferring with the Bureau of Reclamation and reviewing environmental documents), holding the District harmless and, if there is

Michelle Banonis, Natural Resources Specialist, Bureau of Reclamation
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continued

any way of doing so, insulating the District from third party liability to which the River Restoration project gives rise.

2. Agreements between the Bureau of Reclamation and landowners need to be entered into, including both encroachment on the easements in which the Eastside Bypass was constructed and on issues such as the reduction of the landowner's ability to mine sand in the bypasses and the River. In this regard, the final WY 2010 environmental document provided that, "WY 2010 Interim Flows would not be released until any such necessary agreements are in place." (Section 2.2.3, page 2-31). The District understands that no such agreements are in place even today. The WY 2011 draft environmental document provides that implementing the WY 2011 flows,

"would require coordination with Federal State and/or local agencies, *as well as landowners*, for the release and conveyance of flows through some reaches of the San Joaquin River and bypass system, and/or the potential diversion of flows." [Emphasis added.] (Section 2.2.5 at page 2-13).

LSJLD-2

It is unclear from this language if the River Restoration Project is going to even seek agreements with landowners across whose land the Eastside and Mariposa Bypasses were built to allow for the passage of Interim Flows or Restoration Flows¹. It is even less clear if it is going to compensate landowners for reducing their ability to mine sand on their own property² or exercising their rights to extract minerals which are under the river bed.

¹Other communications with the Bureau of Reclamation suggest that the Bureau believes that no such agreements with the landowners along the Eastside and Mariposa Bypasses are necessary based on the Bureau of Reclamation's interpretation of the wording of the easements. Both the District and the Department of Water Resources are on record as interpreting those easements as requiring the consent of the property owners for increasing the burden on their property.

²The response to comments in the final WY 2010 environmental document refers to there being a lack of conditional use permits having been issued for landowners to mine sand, (Appendix I, pages 3-76, LSJLD 2 b and page 3-77, LSJLD 6 a). A telephone call to Merced County Planning Department indicates that no CUP is required in Merced County for mining sand in the Eastside Bypass because it constitutes cleaning out a "flood control facility" under the regulations implementing the Surface Mining and Reclamation Act, (see 14 CCR 3505) and County regulations mirror the SMRA requirements.

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LSJLD-2
continued

The District's position is that both situations should be addressed in written agreements signed before the beginning of WY 2011, (just as they should have been addressed before the beginning of WY 2010, but were not). Failing to do so opens the door to liability for the Bureau and for the Department of Water Resources. The Levee District does not wish to be drawn into the litigation which it believes is likely to result.

3. The Levee District, in its comments on the draft 2010 environmental document, objected to the following language:

LSJLD-3

"The release of WY 2010 Interim Flows would be managed to avoid interfering with operations of the San Joaquin River Flood Control Project. This includes operations of the Chowchilla Bypass Bifurcation Structure, Sand Slough Control Structure, Eastside Bypass Bifurcation Structure and Mariposa Bypass Bifurcation Structure, as well as San Joaquin River Flood Control Project levee maintenance. . . . The Lower San Joaquin Levee District regularly conducts operation and maintenance (O & M) activities to maintain channel capacity within the San Joaquin River Flood Control Project. These O & M activities would continue under the Proposed Action, and *could occur more frequently.*" [Emphasis added.] (draft WY 2010 environmental document, Section 2.2.2 at page 2-18).

The Levee District in its comments on the draft WY 2010 environmental document pointed out that the River Restoration Project would, in fact, interfere with the Levee District's operations and maintenance and, because the floor of the Eastside Bypass and possibly the Mariposa Bypass would be wet much of the year, the O & M activities would occur less (not more) frequently. The Bureau not only did not remove this paragraph from the final WY 2010 environmental document, (final WY 2010 environmental document, Section 2.2.2 at page 2-17), but has now reprinted it in this draft WY 2011 environmental document changing only the year from 2010 to 2011, (draft 2011 environmental document Section 2.2.4 at page 2-13). It is patently untrue.

Pursuant to Army Corps of Engineers' and Department of Water Resources standards, the District's maintenance of the bypass system requires it to remove vegetation in order to maximize the space available for the transportation of flood waters. The methods used by the District for many years have included the application of herbicides on the levees and channels. Other activities include the "chaining" of the levee slopes, (which means

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Re: The Lower San Joaquin Levee District's comments on the "Supplemental Environmental Assessment – Interim Flows Project – Water Year 2011"

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continued

dragging a large chain at each end along the surface of the slope in order to remove broadleaf vegetation) and, in some situations, the removal and pruning of flow restrictive trees by hand. The herbicides currently used cannot, by law, be used around any water which may flow into the River and from there into the Delta. None of these activities can be performed on the levee slopes of a bypass when there is water in the bypass. Access to the channel bottom for men and equipment is necessary for this activity and it cannot be performed when the channel bottom of the bypass is wet.

This Proposed Action would mean that there would be water in the Eastside Bypass north of Washington Avenue in Merced County virtually all year³. These channels could be wet from October 1 to November 30 of one year, and then again from February 1 until September 30 of the next year. Under the schedule presented, the only time when there would be no water releases into the system would be from December 1 to February 1, which means that this would be the only time afforded for maintenance such as vegetation management. The reach of the Eastside Bypass affected with these flows does not allow quick leaching into the channel bottom because of the type of soils and the December and January are wet months in most years. The District's field crew has observed over the years that water will remain on the surface for many weeks before it percolates into the soil. The proposed schedule does not take into consideration the effect this has on the proper maintenance of the flood control project. While some maintenance activities might be accomplished during December and January, depending upon the weather and percolation, any herbicide application during this time frame would be ineffective because the typical vegetation in these locations would be dormant at this time of the year. Weather conditions constrain all field activities, and the time schedule of this project, grouped together with wet weather conditions throughout the system, severely hamper maintenance by the District.

While an agreement between the Levee District and the Bureau of Reclamation would help the Levee District to afford the heightened cost of operation and maintenance, no agreement or anything else will keep the project from interfering with the District's operation and maintenance nor make the District's O & M occur more frequently. The offending language should be removed.

³As discussed below in this letter, the final 2010 environmental document left it to the discretion of the Levee District as to whether to let the water flow down the Eastside Bypass from Washington into the Mariposa Bypass or to let it flow all the way to the River in the Eastside Bypass. Because of factors discussed below, the Levee District's only realistic alternative is to leave it in the Eastside Bypass all the way back to the River.

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Michelle Banonis, Natural Resources Specialist, Bureau of Reclamation

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4. In the District's comments to the WY 2010 draft environmental document, the District pointed out that there would be longer term impacts on the O & M of the system after the end of WY 2010 which could not be assessed until that water year was over. The response to this comment in the final WY 2010 environmental document was that long term impacts were outside of the scope of the WY 2010 environmental document, (final WY 2010 environmental document, Appendix I, page 3-76). The impacts from the 2010 project are not even mentioned in the draft WY 2011 document even though WY 2011's Interim Flows are going to make the impacts even worse. Surely CEQA and NEPA require consideration of cumulative impacts. Once again, there is nothing in the draft 2011 environmental document to assess the impacts which will occur because of the 2011 project but which cannot be assessed until WY 2011 is over.

LSJLD-4

Once the 2011 project is over, the San Joaquin River Restoration Project will then go into subsequent water years immediately following each year's project. That project calls for water to be in the Eastside Bypass from the Sand Slough control structure at the very least to the confluence with the Mariposa Bypass⁴ again, from the first day of the new project. There will be no opportunity for the District to de-water the bypass system and remove the vegetation from it. The only method to remove the vegetation which will be recruited by the Interim Flows during the project will be using hand tools and herbicides which are permissible for use around water which will flow in the River and, from there, into the San Francisco Bay - San Joaquin Delta estuary. This method of removing vegetation is labor intensive both in the use of the hand tools and in the application of herbicide since the herbicides which can be used legally are not as effective as the herbicides currently used and so are likely to require more than one application. District field personnel are not trained in the application of these water tolerant herbicides since, prior to the River Restoration projects, the use of these herbicides has been unnecessary. Since these costs are unknown and will remain unknown until the end of the WY 2011 project it would make sense to handle them with an agreement by the Bureau of Reclamation to reimburse the District its expenses. Unfortunately the Bureau of Reclamation has taken the position that it will make no commitments for damages which are not fully known until after the end of each project. This sort of thinking has been one of the stumbling blocks to an agreement on O & M between the Levee District and the Bureau of Reclamation.

⁴The water then has been in the WY 2010 project, then remaining in the Eastside Bypass and thence back into the river. As noted above and discussed below, it could be put into the Mariposa Bypass and back into the river that way however, to operate the system in this way created some unfortunate consequences.

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5. On the issues concerning Reach 4 B of the River, the District's comments from last year addressed a number of sub-issues:

a. The District pointed out that the text of the draft environmental document for WY 2010 was vague on whether the water was to go in the Eastside Bypass from the San Slough Control Structure all the way to confluence with the Merced River or whether it was to go from the Eastside Bypass into the Mariposa Bypass and thus back to the River. The final WY 2010 environmental document made it clear that it is up the discretion of the Levee District as to which one of these routes to use, (final WY 2010 environmental document, Section 2.2.2 at page 2-24). The draft WY 2011 document does not seem to vary from the final WY 2010 environmental document in this regard. While this approach allows the Levee District to alternate having either the Mariposa Bypass wet or that portion of the Eastside Bypass from the inlet to the Mariposa Bypass to the River wet, it does mean that the portion of the Eastside Bypass from the San Slough Control Structure to the Mariposa Bypass inlet will remain wet year round. This does not allow the District to remove vegetation and so hampers the District's ability to maintain this portion of the Eastside Bypass.

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During the WY 2010 project, the District has kept the water in the Eastside Bypass all the way to the river rather than using the Mariposa Bypass. The reasons for this include the fact that, as discussed in the comments to the draft WY 2010 environmental document, the invert into the Mariposa Bypass is so high that, in order to get water into the Mariposa, the gates to the Eastside Bypass must be closed and the water allowed to accumulate upstream until the level is high enough to get through the invert into the Mariposa. This ponding of the water causes the inundation of Dan McNamara Road which, in turn, requires traffic to be diverted onto the gravel roadway on the top of the levee. This increases the maintenance issues for that levee. The ponding of the water can adversely affect the efforts of upstream landowners to remove sand from the Eastside Bypass downstream of Washington Avenue. The District wants to encourage the removal of sand in order to help return the bypass to its designed capacity.

As a consequence of keeping the water in the Eastside Bypass for its entire length, the same maintenance problems discussed above for the Eastside Bypass between Washington Avenue and the invert of the Mariposa Bypass are also problems for the Eastside Bypass from the Mariposa Bypass invert north to its confluence with the river.

b. The District's comments on the draft WY 2010 environmental document pointed out that, while the document referred to the diversion of Interim Flows at the East Bear Creek

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Unit for exchange with water supplies from the Delta Mendota Canal which would otherwise be delivered, so that these waters could be used in the Friant Division, in fact the water to the East Bear Creek Unit and the Lone Tree unit came from the Merced Irrigation District (and not from the Delta Mendota Canal) and that it was unclear how such a swap could result in additional water in the Friant Division. The final WY 2010 environmental document acknowledged that the water did in fact come from the Merced Irrigation District but once again suggested that replacing the Merced Irrigation District water could result in more water in the Friant Division without explaining how this would happen, (final WY 2010 environmental document, Appendix I, page 3-76; Section 2.2.2 at pages 2-24 to 2-25). This is repeated in the draft WY 2011 document, again without an explanation of how this is going to be accomplished, (draft WY 2011 environmental document, Section 2.2.2 at page 2-6) or an examination of the environmental consequences of whatever means are used to accomplish this.

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c. This was the same issue addressed in paragraph 5 a, above.

d. As the District pointed out in its comments on the draft WY 2010 environmental document, sending water down the Mariposa Bypass requires ponding the water so that its level will reach the invert at the upstream end of the Mariposa bypass. This results in the inundation of Dan Mc Namara Road and so gives rise to the need to divert traffic onto the levee bank. In the response to this comment in the final WY 2010 environmental document, it was said that "Only paved roads would be used as detour routes; the text was revised to clarify." (final WY 2010 environmental document, Appendix I at page 3-76). The following text then appeared in the final environmental document:

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"Convenient and parallel vehicular traffic detours would be provided for public routes that would be closed because of the inundation by WY 2010 Interim Flows (including Dan Mc Namara Road in Eastside Bypass Reach 2). A detour would be prepared and implemented in accordance with current California Department of transportation Standard Plans and Specifications. The detour plan would be prepared and implemented before roadway inundation. If the detour plan identifies substantial increases in miles traveled on unpaved roads as compared to the original route, the plan would identify measures to comply with all applicable SJVAPCD regulations regarding paved roadways." (Final WY 2010 environmental document, Section 2.2.4 at Page 2-33).

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Not only does this not say that only paved roads will be used in the detour of traffic resulting from the inundation of Dan Mc Namara Road, it also says that the detour plan would be "implemented before inundation occurs."

The draft WY 2011 environmental document says:

"As described in the WY 2010 Final EA/IS convenient and parallel vehicular traffic detours would be provided for public routes that would be closed because of inundation by WY 2011 Interim Flows. A detour plan has been prepared and is under review by local traffic agencies. The plan will be implemented upon approval and in accordance with current California Department of Transportation Standard Plans and Specifications." (Draft WY 2011 environmental document Section 2.2.6 at page 2-15)

In other words, the statement in the final WY 2010 environmental document that, "The detour plan would be prepared and implemented before roadway inundation," appears to have been inaccurate since the plan, even now, has not yet been implemented nor is there any assurance that it will be implemented before the WY 2011 project again causes the inundation of Dan McNamara Road. In short, this is an unmitigated environmental impact which, in itself, should preclude the use of a FONNSI.

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e. In the District's comments on the draft WY 2010 environmental document it was pointed out that at least one farmer, downstream of the Sand Slough control structure, mines sand from the Eastside Bypass. The response to this comment included the statement that, "Flows would not inundate the channel year round under the Proposed Action. Sediment mobilization due to less than 1 year of flow is anticipated to be *de minimus*." (Final WY 2010 environmental document, Appendix I, page 3-77). Again, the sediment mobilization will now occur one more year and the environmental document fails to consider this cumulative impact.

LSJLD-6

6. The District still is of the opinion that the parties to the settlement should return to court and hammer out a modification of the settlement agreement with a more reasonable time line. It would appear at this point that such a process will not occur unless and until it becomes apparent that the improvements which are to be constructed in the first phase of the River Restoration project cannot be built in the time remaining for the first phase of the project.

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There is at least one issue which the draft WY 2011 environmental document does not address. The WY 2010 project and the proposed WY 2011 project both involve rather low flows going through the Eastside Bypass immediately downstream of the Sand Slough Control Structure. Because of historical subsidence issues, the flows through this area have slowed over the past years. The building up of silt in the bypass channel is a continuing issue. Previously, an adjacent landowner had been able to remove some of the sand accumulating in the channel which helped bring the channel back toward its design criteria. With the channel now being continually wet, that activity is no longer taking place. The low flows which are part of the River Restoration projects have brought silt down stream increasing the amount of the sand deposited in this reach of the Eastside Bypass. This has further contributed to a reduction in the channel capacity. As a consequence, flows in this reach back up upstream into the Eastside Bypass creating additional operation and maintenance issues for the Levee District. This material must be removed in order to maintain the channel's ability to pass flood waters safely. As noted above, this portion of the Eastside Bypass is wet for virtually the entire year as a result of the WY 2010 project and now the WY 2011 project. This issue should be addressed.

Very truly yours,

Linneman, Burgess, Telles,
Van Atta, Vierra, Rathmann,
Whitehurst & Keene



Thomas J. Keene

cc: Reggie Hill, Secretary-Manager
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